

Fordham International Law Journal

Volume 10, Issue 4

1986

Article 11

Land Acquisition in Developing Countries

Allan J. Berlowitz*

*

Copyright ©1986 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

Land Acquisition in Developing Countries

Allan J. Berlowitz

Abstract

The book's introduction reveals a startling premise that will potentially affect all counties, not just those in the Third World: by the year 2000, almost sixty urban centers will have populations in excess of five million, and almost fifty of those urban centers will lie in developing countries. The essential structure of Mr. Kitay's book consists of passages of explanation and analysis, with examples and observations concerning land acquisition in developing countries. The explanation and analysis portion begins with a discussion of the threshold issue of whether the private sector or government should be primarily responsible for land policy formulation, and proceeds to an analysis of the cost advantages to a municipality if it undertakes a program of advanced land acquisition. Once he establishes his premise, the author examines the techniques employed in acquiring the land, the institutions charged with that responsibility, and the methods of financing the acquisition.

LAND ACQUISITION IN DEVELOPING COUNTRIES. By Michael G. Kitay. Boston: Oelgeschlager, Gunn & Hain, 1985. xx + 127 pp., appendices, bibliography, index. \$30.00. ISBN 0-89946-192-1.

*Reviewed by Allan J. Berlowitz**

Michael G. Kitay, author of *Land Acquisition in Developing Countries*, began his association with the Third World and the law over twenty years ago as an instructor of law at the Louis Arthur Grimes School of Law in Monrovia, Liberia. He served at the law school for two years teaching courses to his African students based upon principles of the English common law as adapted by Liberia. During those formative years in his professional career, however, his presence in Africa and the Third World enriched his career with knowledge and insights that he would not have attained through books or his presence in a classroom.

After completing his tour in Monrovia, Mr. Kitay returned to this country and began practicing corporate law in New York City, affording him a basis of comparison with the principles and techniques of the Third World he had just left behind. In the early 1970s, he joined the United States Agency for International Development, the agency responsible for implementing United States policies to foster development in Third World countries and promote trade between those countries and the United States. He has remained with the agency, and currently holds the position of Chief Counsel for the worldwide housing and urban program.

Land Acquisition in Developing Countries is a direct outgrowth of the year the author spent as a visiting scholar at Harvard Law School as a Fellow of the Lincoln Institute of Land Policy. During that year, Mr. Kitay did extensive reading on the subject of land acquisition, enhancing the practical knowledge he already possessed as a practitioner in the field.

The book's introduction reveals a startling premise that will potentially affect all countries, not just those in the Third

* Partner, Delamater & Berlowitz, New York City. A.B., Princeton University, 1962; LL.B. Columbia University, 1965. Mr. Berlowitz served as Legal Counsel, Department of Planning and Economic Affairs, Government of Liberia, 1965-67.

World: by the year 2000, almost sixty urban centers will have populations in excess of five million, and almost fifty of those urban centers will lie in developing countries. (p. xv) The growth of population in the Third World and the shift of those populations from rural to urban settings, according to one source, has resulted in one of the greatest migrations in the history of the world. (p. xvii)

If the author's projections are at all close to being accurate, the resulting population growths and movements will have a profound effect not only on the Third World, but also on the quality of life in the United States and in other developed countries. The effect on life in the countries experiencing the growth and movement will also be significant. Overcrowding in urban areas that lack infrastructure breeds poverty and frustration. That poverty and frustration, however, can no longer be expected to influence only those countries in which they originally occur. Population movements are likely to cross borders, and even if they do not spill over into more developed countries, adverse conditions caused by exacerbated population growth in urban areas could easily influence the external policies of developing countries to the detriment of the developed countries.

One final point bears mention regarding the relevance of the author's work to people living both inside and outside the Third World. Recent studies indicate that although the populations of several of the largest urban centers in the United States have been decreasing slightly, the poverty-level populations of those same centers have been increasing. That trend is narrowing the differences between our major cities and those of the developing countries, as they gradually assume the guise of their sister cities in the Third World. Thus, the observation made by Professor Charles M. Haar, in his foreword to the book, that the process of applying land acquisition principles to developing countries may very well be bi-directional for the developed countries, may prove in the years to come to be true in even more cases than it is today. (pp. xi-xii)

The essential structure of Mr. Kitay's book consists of passages of explanation and analysis, with examples and observations concerning land acquisition in developing countries. The explanation and analysis portion begins with a discussion of the threshold issue of whether the private sector or govern-

ment should be primarily responsible for land policy formulation, and proceeds to an analysis of the cost advantages to a municipality if it undertakes a program of advanced land acquisition.

This threshold issue merits special consideration because the author's analysis of how it should be resolved spawns his discussion of the techniques of land acquisition in the Third World. He concludes that government intervention is necessary to provide communities with appropriate social needs, such as schools, housing and health facilities, and to stabilize the market for their land. (p. 4) On the other hand, he observes that if development were left entirely in the hands of the private sector, the profit motive would predominate to the detriment of lower profit projects that are nonetheless essential to community development.

Once he establishes his premise, the author examines the techniques employed in acquiring the land, the institutions charged with that responsibility, and methods of financing the acquisition. His discussion is peppered with examples from developed countries as well as the Third World.

Mr. Kitay also makes some interesting observations about voluntary acquisitions and eminent domain. For example, the author notes that notices of public acquisitions in themselves tend to inflate prices. (p. 15) He compares the conventional government approach with that of the private sector where the identity of a buyer attempting to acquire a substantial parcel is secretly guarded. As an exception to the general rule, however, the procedures of Mexico and Portugal are used as examples. Those countries have adopted laws that permit secrecy concerning the identity of the public authority making purchases in recognition of the general approach of a private assembler.

The author also explains the process of land adjustment where a plan for an undeveloped parcel on the periphery of an urban area is formulated, calculating the costs of completing the infrastructure as well as the increase in the value of the remaining property. (p. 24) A determination is then made as to how much private land must be sold to recoup the costs of development.

The discussion of expropriation based upon undervalua-

tion is also informative. Mr. Kitay uses the procedures invoked by Taiwan as an example. Under those procedures, a land owner is expected to declare the value of his own land for purposes of taxation. Undervaluation could eventually result in sale to the government at self-determined valuation. (p. 53)

The main problem facing the developing countries in implementing a policy of land acquisition is the lack of funding. Mr. Kitay points out the related problem that a sophisticated professional staff is needed to carry out a land acquisition program. (p. 72) In any case, both problems arise from the lack of money, which usually must be sought from external sources. Obstacles in obtaining the external financing are candidly discussed by Mr. Kitay, and, to his credit, he comments on the element of corruption that all too frequently plays a role in government projects involving large sums of money.

It is interesting to note that Mr. Kitay does not believe that the prospect of corruption in land dealings are any greater than those for other programs involving donor financing. (pp. 96-97) He supports his conclusion by calling to our attention that the price of urban land is well known in the Third World. Thus, he infers that such knowledge would serve to check extreme incidents of corruption, especially when coupled with proper supervision from donor agencies.

Yet is the price of urban land as well established as the author believes? There have been numerous incidents of corruption in food programs involving fungible products, so it would seem that a greater possibility for corrupt practices exists when dealing with property that is unique in character, such as land. And even the author admits that the lack of a vigorous private land market makes valuation of real property in the Third World difficult. (p. 16)

Mr. Kitay's diverse background, integrity, and commitment to assisting the developing countries command respect for his ultimate message that the obstacles to the programs he sets forth should not stand in the way of their implementation:

The main issue, though, is for all concerned to move, to make the hard decisions, and to carry them through to execution. The tools are outlined here, and in other works of this nature. All that needs to be added is a national will and the skill and integrity of dedicated public servants. The need is clear and present, and so is the danger. (p. 127)

Perhaps Mr. Kitay's work could be better organized and indexed by numbering the headings, and by either expanding the table of contents to indicate the subheadings or reducing the number of those subheadings. This minor flaw, however, does not undermine the value of Mr. Kitay's effort.

Land Acquisition in Developing Countries is an important work. It provides a comprehensive survey of the land acquisition techniques used by developing countries and an analysis of their operations, by a person with comprehensive vision of both the developing and the developed worlds.